

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

IN RE EXCELSIOR, FEDERATED,	:	MDL 1586
and SCUDDER	:	
	:	
This Document Relates to:	:	Case No. 04-MD-15861
	:	
EXCELSIOR FUNDS SUB-TRACK	:	
	:	
<i>Murphy v. The Charles Schwab Corp., et al.</i>	:	
	:	...o0o...

**ORDER**

Defendant Edward Owens, director and sole stockholder of Illinois Hedge Fund Samaritan Asset Management Services (“Samaritan”), has filed a motion to dismiss for lack of personal jurisdiction. Owens and Samaritan are named in complaints alleging market timing of the Excelsior Funds (headquartered in Pennsylvania) through a New York broker. Owens asserts that he is not subject to personal jurisdiction in Pennsylvania or New York, though no such defense is raised on behalf of Samaritan. He proffers an affidavit to dispute the plaintiffs’ allegations that Samaritan acted as his agent in New York and that he caused Samaritan to engage in tortious conduct directed towards Pennsylvania residents.

As counsel conceded at oral argument: (1) personal jurisdiction over Owens would be proper in the Northern District of Illinois; and (2) if the claims against Owens were transferred to that District during the pretrial phase of this litigation, the Judicial Panel on MultiDistrict Litigation would have the authority to transfer the claims back to Maryland. Counsel was unable to identify a practical benefit to his client or the litigation that would result from embarking on this circuitous procedure.

The court understands that Owens is entitled to a determination of the personal jurisdiction

issue, at an appropriate time. I am persuaded, however, that the plaintiffs have made a sufficient showing to be entitled to jurisdictional discovery before a ruling is made. Given the factual allegations of Owens's extensive personal involvement with Samaritan, the plaintiffs should not be forced to accept at face value the assertions in Owens's affidavit by which he seeks to distance himself from his fund's activities. There is no reason, however, to engage in that jurisdictional discovery before a coordinated discovery schedule that would include Samaritan has been established.

Accordingly, it is hereby **ORDERED** that:

1. Edward Owens's Motion to Dismiss (docket entry no. 351) is **Denied without prejudice**;
2. jurisdictional discovery will be permitted at a later date; and
3. Owens may renew his motion if he so chooses after that discovery is complete.

March 3, 2005

Date

/s/

Catherine C. Blake  
United States District Judge